

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TLIF, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
BIOMET, INC.;)	
)	
EBI, LLC, D/B/A BIOMET SPINE)	
& BONE HEALING TECH;)	
)	
BIOMET SPINE LLC)	
)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff TLIF, LLC (“TLIF”) hereby complains of defendants Biomet, Inc., EBI, LLC, Biomet Spine, LLC and Biomet Texas (collectively, “Biomet” or “Defendants”) as follows:

PARTIES

1. Plaintiff TLIF, LLC (“TLIF”) is a company organized under the laws of the State of Texas with its principal place of business located at 719 W. Front Street, Suite 244, Tyler, Texas 75702.

2. Defendant Biomet, Inc. is a corporation organized under the laws of the State of Indiana with its principal place of business located 56 East Bell Drive, Warsaw IN. On information and belief, Biomet, Inc. regularly conducts business in this judicial district at least through its offers for sale, and sales of infringing devices by itself or on its behalf.

3. Defendant Biomet Spine, LLC is a company organized under the laws of

Delaware with its principal place of business located at 310 Interlocken Parkway, Suite 120, Broomfield, CO. On information and belief, Biomet Spine, LLC regularly conducts business in this judicial district at least through its offers for sale, and sales of infringing devices by itself or on its behalf. Biomet Spine, LLC is a wholly owned subsidiary of Biomet, Inc. and Biomet, Inc. directs or otherwise controls the activities of Biomet Spine, LLC.

4. EBI, LLC d/b/a Biomet Spine & Bone Healing Technologies is a company organized under the laws of the State of Indiana with a principal place of business located at 399 Jefferson Road, Parsippany, New Jersey. On information and belief, EBI, LLC regularly conducts business in this judicial district at least through its offers for sale, and sales of infringing devices by itself or on its behalf. EBI, LLC is a wholly owned subsidiary of Biomet, Inc. and Biomet, Inc. directs or otherwise controls the activities of EBI, LLC.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*

6. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court may exercise personal jurisdiction over Defendants based upon their contacts within this forum, including regularly conducting business in this judicial district, by, *inter alia*, selling/offering for sale infringing devices in this judicial district.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c), (d) or 1400(b).

BACKGROUND

9. United States Patent No. 6,143,032 (“the ‘032 patent”) entitled “Intervertebral Implant,” issued on November 7, 2000 to inventors Mr. Bernd Schafer and PD Dr.

Henry Halm. Mr. Schafer was founder of Schafer Micomed, GmbH and Dr. Halm was senior consultant of the Department for Spine Surgery at the Medical Center of Neustadt/Holstein, and previously senior physician at the University of Münster, Spine Service of the Department of Orthopedic Surgery.

10. The '032 was assigned to Schafer Micomed, GmbH in Goppingen, Germany. Schafer Micomed, GmbH commercialized and sold the patented product as the "TIF-Cage".

11. DePuy Spine SARL acquired the '032 family as part of its acquisition of the assets of Schafer Micomed, GmbH and Mr. Schafer. The patent assignment to DePuy Spine SARL was recorded on November 30, 2004.

12. The '032 family was acquired by Orthophoenix, LLC in a transaction with DePuy Synthes in July 2014 and then acquired by TLIF, LLC a Texas LLC, in September 2014. Assignment to TLIF, LLC was recorded by the USPTO on September 09, 2014.

THE '032 PATENT

13. TLIF owns United States Patent No. 6,143,032 ("the '032 patent") entitled "Intervertebral Implant," which was duly and legally issued by the United States Patent & Trademark Office on November 7, 2000. A copy of TLIF's '032 patent is attached to this Complaint as Exhibit A.

DEFENDANTS' INFRINGING ACTIVITIES

14. Without TLIF's authorization, Defendants have made or imported, used, offered for sale and sold in the United States intervertebral implants which infringe one or more claims of the '032 patent (hereinafter, the "Accused TLIF Devices"). The Accused TLIF Devices include, but are not limited to Biomet's Zystron Curve Interbody Spacer.

15. TLIF has been and will continue to be irreparably harmed by Defendants' infringement of the '032 patent.

COUNT 1: PATENT INFRINGEMENT

16. TLIF re-alleges each and every allegation above, and incorporates them by reference herein.

17. Defendants have directly infringed and continues to directly infringe at least claims 1-5, 8, 11-14 of the '032 patent under 35 U.S.C. §271(a), by making and/or importing, using, offering to sell, and selling the Accused TLIF Devices in or into the United States.

JURY DEMAND

18. TLIF requests a trial by jury of all issues so triable.

RELIEF REQUESTED

WHEREFORE, Plaintiff TLIF respectfully prays for:

- A. Judgment that Defendants have and is infringing United States Patent No. 6,143,032 in violation of 35 U.S.C. § 271(a);
- C. An award of damages adequate to compensate Plaintiff TLIF for the patent infringement that has occurred pursuant to 35 U.S.C. § 284;
- D. An assessment of costs, including reasonable attorney fees, pursuant to 35 U.S.C. § 285, with prejudgment interest;
- E. Such other and further relief as this Court deems just and proper.

Dated: September 10, 2014

/s/Andrew W. Spangler

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